ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services	CC Docket 94-54

To: The Commission

COMMENTS OF NEW PAR

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SUMMARY

New Par concurs with the Commission's tentative conclusion to refrain from imposing mandatory interconnection obligations on CMRS providers. To the extent technically and economically feasible, interconnection will develop naturally through the operation of competitive CMRS market forces. Public policy considerations, such as ensuring access to all networks, do not warrant mandatory CMRS-to-CMRS interconnection because all CMRS end users can currently access all other public network end users via interconnection with landline local exchange carriers ("LECs").

Moreover, New Par submits that traditional antitrust analysis likewise does not warrant mandatory CMRS interconnection. Given current market realities, interconnection via landline LECs is reasonably interchangeable with direct CMRS-to-CMRS interconnection. The relevant market for purposes of evaluating the need for mandatory interconnection therefore includes interconnection via landline LECs. Cellular carriers possess, at most, a small share of this relevant upstream market and thus would be unable to raise emerging CMRS providers' costs by refusing direct interconnection.

Even if the Commission were to impose mandatory interconnection on all facilities-based CMRS carriers, reseller-switch interconnection does not follow. Resellers have no independent network that needs interconnection to the PSTN for call completion. All necessary connections are available through the facilities-based CMRS provider whose services it resells. Further, inefficiencies and added costs associated with duplicating the switching functions of the facilities-based carrier outweigh any possible public interest benefits associated with switch-based resale.

With respect to roaming, market forces also will drive the development of cross-service roaming arrangements for the primary reason that many cellular licensees will also be PCS providers, and vice versa. As a matter of prudent business and marketing practices, these diversified CMRS providers will encourage cross-service roaming by their subscribers.

Finally, regulatory parity requires that uniform resale obligations be imposed on all cellular-like CMRS providers. New Par recommends, however, that the resale obligation owed to other facilities-based CMRS providers should sunset one year following Commission grant of a license to that CMRS provider.

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New Par, by its attorneys, respectfully submits these comments in response to the Commission's Second Notice of Proposed Rule Making ("Second NPRM") in the above-captioned proceeding. New Par, through partnerships or subsidiaries, is the nonwireline cellular service provider in 22 MSAs and RSAs in Michigan and Ohio. New Par has a direct interest in the outcome of this rulemaking and has participated[1] in the preceding Notice of Inquiry[2] in the above-captioned docket.

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1 See New Par Comments, filed Sept. 12, 1994; New Par Reply Comments, filed Oct. 13, 1994.

2 Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, 9 FCC Rcd 5408 (1994) [hereinafter Interconnection NOI].

I. INTERCONNECTION OBLIGATIONS

A. The Commission Should Allow the Competitive CMRS Marketplace To Determine Interconnection Arrangements Between CMRS Providers.

New Par concurs with the Commission's tentative conclusion that it is premature to impose generally a direct interconnection obligation on CMRS providers.[3] Mandatory CMRS-to-CMRS interconnection is not necessary to promote a diverse and competitive market for CMRS. Indeed, the already competitive cellular market will imminently face intense competition from broadband personal communications services ("PCS"), enhanced specialized mobile radio ("ESMR"), and mobile satellite service ("MSS") providers. Interconnection among the multitude of CMRS providers, to the extent feasible and economical, will evolve naturally through the operation of market forces without the need for regulatory intervention.

As the Commission itself has recognized, mandatory interconnection obligations traditionally have been imposed either (1) to eliminate carrier control over bottleneck facilities or (2) to make services more widely available by increasing the number of carriers.[4] The

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[3] See Second NPRM ¶ 29.

[4] See id. ¶ 36.

Commission previously has imposed interconnection obligations only on carriers controlling access to bottleneck facilities.[5] The traditional rationales for imposing mandatory interconnection simply are not present in the CMRS marketplace due to lack of control over monopoly bottleneck facilities and to the much-anticipated entry of additional CMRS providers.[6]

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[5] See, e.g., Specialized Common Carrier Services, 29 F.C.C.2d 870 (1971), aff'd sub nom. Washington Utilities & Transportation Comm'n v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975); The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2916 (1987), aff'd, 4 FCC Rcd 2369 (1989) [hereinafter Interconnection Declaratory Ruling]. Furthermore, contrary to CTIA's interpretation (see Second NPRM ¶ 16), the international record carrier ("IRC") cases did involve control over bottleneck facilities. Specifically, in requiring interconnection of IRC networks for overseas (but not domestic) service, the Commission described the international component of record service as characterized by very few carriers and highly restricted entry. In fact, since only one IRC was generally afforded access to an international market, that IRC effectively controlled access to bottleneck facilities for other IRCs seeking to deliver traffic to such market. See Interface of the International Telex Service with the Domestic Telex and TWX Services, 76 F.C.C.2d 61, 66 (1980), aff'd sub nom. 665 F.2d 1126; see also ITT World Communications, Inc., 87 F.C.C.2d 624 (1981) (Commission reiterating that domestic and international interconnection are distinct issues in the IRC context).

[6] See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1499 (1994), recon. pend- (continued...)

Moreover, public policy considerations do not warrant imposition of interconnection obligations on CMRS providers. First and foremost, the policy of ensuring access to mobile networks now or in the future is not implicated because CMRS end users currently can, and do, access all other public network end users through CMRS carriers' ubiquitous interconnection to landline local exchange carriers ("LECs").[7] When traffic between CMRS systems reaches a level justifying the sunken costs of direct interconnection, such interconnection will evolve

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[6](...continued)
ing [hereinafter CMRS Second Report and Order] (acknowledging that CMRS providers do not control bottleneck facilities).

[7] Under Section 20.11 of the Commission's rules, LECs are required to provide interconnection to CMRS providers upon reasonable request. 47 C.F.R. §20.11. See also CMRS Second Report and Order, 9 FCC Rcd at 1497-98 (recognizing LEC obligation to provide interconnection to all CMRS providers); Interconnection Declaratory Ruling, 2 FCC Rcd at 2916 (clarifying obligation of landline LECs to provide interconnection to cellular carriers upon reasonable request); An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 86 F.C.C.2d 469, 496 (1981), modified, 89 F.C.C.2d 58 (1982), further modified, 90 F.C.C.2d 571 (1982), appeal dismissed sub nom. United States v. FCC, No. 82-1526 (D.C. Cir. 1983) [hereinafter Cellular Communications Systems] (requiring "telephone companies" to furnish interconnection to cellular systems upon reasonable demand).

naturally through the operation of market forces because it will be in the best interest of all CMRS providers. Further, reliable service and reasonable rates for mobile voice services will continue to develop naturally through intense competition among cellular, PCS, ESMR, and MSS providers just as it has through competition in the cellular industry alone. Finally, the competitive nature of the mobile voice marketplace will ensure that the needs of users and carriers will be adequately handled. If sufficient demand develops, as a matter of sound business judgment CMRS carriers will interconnect with one another.[8]

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[8] Even the Commission recognizes that, when neither cellular licensee has substantially greater market share than the other, both carriers would stand to benefit equally if CMRS-to-CMRS interconnection lowered overall costs. Second NPRM ¶ 32. Yet, no such interconnection has developed between CMRS competitors even in the areas where neither of the two facilities-based cellular carriers are affiliated with the LEC, such as in the City of Cleveland. For instance, in the City of Cleveland, neither GTE Mobilnet nor New Par d/b/a Cellular One® is associated with the landline LEC (*i.e.*, Ameritech). Thus, it would certainly be in both carriers' best interests to interconnect directly with one another if the economics justified direct interconnection (*i.e.*, if the volume of intersystem mobile-to-mobile calls were sufficient to overcome the costs of maintaining both the direct connect and the LEC interconnection). The absence of a direct interconnection arrangement between these cellular licensees demonstrates that direct interconnection is not economically reasonable.

In short, the competitive CMRS marketplace, together with the procedural mechanism available to the Commission under Section 201(a) of the Communications Act of 1934, as amended (the "Act"), obviates the need for broad guidelines for interconnection as proposed by PCIA and APC. In any event, the guidelines proposed by PCIA and APC are based on a flawed reading of these sections of the Act.[9] Section 201(a) requires CMRS providers to provide service to customers upon reasonable request without any specific Commission order.[10] The absolute duty of a CMRS provider to interconnect its network with the facilities of another carrier arises only if the Commission has specifically ordered such direct interconnection when necessary or desirable in the public interest.[11] Because CMRS providers are not under a legal duty to establish physical interconnection with other CMRS providers, they likewise have no obligation to engage in negotiations to reach an agreement regarding interconnection. Indeed, the Commission has imposed the duty to

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9 See Second NPRM ¶ 27; see also PCIA Comments at 16-18; APC Comments at 6-7.

10 47 U.S.C. § 201(a); see also ITT World Communications, Inc. v. Western Union Telegraph Co., 87 F.C.C.2d 684, 691 (1981).

11 47 U.S.C. § 201(a).

negotiate only when a carrier is already under the mandatory obligation to provide interconnection upon reasonable request.[12] The "guidelines" proposed by PCIA and APC, therefore, are nothing more than a disguised request to impose mandatory interconnection obligations on all CMRS providers.

Finally, on the eve of intense competition in the CMRS marketplace, the classification of CMRS providers as dominant or nondominant for purposes of interconnection "guidelines" would be inappropriate and contrary to prior Commission holdings. Specifically, in contrast to APC's suggestion that cellular licensees be classified as dominant CMRS providers,[13] the Commission itself has recently recognized that cellular carriers lack market power in the CMRS marketplace due at least in part to the near-term entry of PCS.[14] And thus, having no

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12 See, e.g., Interconnection Declaratory Ruling, 2 FCC Rcd at 2914.

13 APC Comments at 6; see also Second NPRM ¶ 27 n.59.

14 See Petition of the State of Ohio for Authority To Continue To Regulate Commercial Mobile Radio Services, FCC 95-193, PR Docket No. 94-109, ¶¶ 22-23 (released May 19, 1995) [hereinafter Ohio PUC Order].

market power in the CMRS marketplace, cellular carriers cannot be classified as dominant CMRS providers.[15]

B. Even Under Traditional Antitrust Analysis, Mandatory Interconnection Between CMRS Providers Is Not Warranted.

The Commission requests comment on the relevant product and geographic markets for purposes of analyzing the need for an interstate interconnection obligation.[16] It is unclear what the Commission intends by the definition of the relevant market or how the relevant market would apply in a public interest analysis under Section 201(a) of the Act, as opposed to a pure antitrust analysis.[17] The Commission is apparently concerned that established CMRS providers could exercise market power in the upstream market and thus adversely affect competition in some downstream output market (*i.e.*, the provision of services to consumers). More precisely, the Commission

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15 See 47 C.F.R. § 61.36(o) (defining a "dominant carrier" as one that has market power).

16 Second NPRM ¶¶ 32-35.

17 See U.S. v. Radio Corp. of Am., 358 U.S. 334, 350 n.18 (1959) (recognizing that public interest questions of communications policy may involve antitrust law, but that enforcement of antitrust law rests with the Department of Justice); U.S. v. FCC, 652 F.2d 72, 88 (D.C. Cir. 1980) (holding that public interest determinations should not be based exclusively on antitrust consequences).

appears to be concerned that cellular carriers could raise the costs of emerging CMRS providers, such as PCS, by refusing direct interconnection and somehow competitively harm these emerging CMRS providers. The Commission's concern is misplaced, however, because given current market realities a CMRS carrier's unwillingness to interconnect directly with another CMRS provider would have no anticompetitive effect.

As an initial matter, cellular carriers cannot exercise market power in any "interconnection" market for the simple reason that they do not currently participate in such an interconnection market. Cellular carriers generally have not entered into any arrangements for direct interconnection with their CMRS competitors, including other cellular carriers. As the courts have routinely recognized, entities cannot engage in exclusionary conduct with respect to a market in which they do not participate.[18] Moreover, even if cellular carriers were deemed to participate in an interconnection

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[18] See, e.g., Capital Imaging Assocs. v. Mohawk Valley Medical Assocs., 725 F. Supp 669, 678 (N.D.N.Y. 1989), aff'd, 996 F.2d 537 (2d Cir. 1993), cert. denied, 114 S.Ct. 388 (1993); White v. Rockingham Radiologists, Ltd., 820 F.2d 98, 104-05 (4th Cir. 1987); Mercy-Peninsula Ambulance, Inc. v. County of San Mateo, 791 F.2d 755, 759 (9th Cir. 1986).

market, the interconnection market clearly includes interconnection through landline LECs;[19] thus cellular carriers can have, at most, a small market share of such an interconnection market and accordingly no market power.

In order to determine whether an entity possesses market power, it is first necessary to define the relevant product market.[20] Whether two products occupy the same market depends on whether the products are "reasonably interchangeable."[21] As shown below, LEC interconnection is reasonably interchangeable with CMRS-to-CMRS interconnection and thus participates in the same market as CMRS-to-CMRS interconnection.

Cellular carriers generally do not directly connect with competing CMRS providers because, given the current distribution of terminating calls, the marginal savings, if any, resulting from direct CMRS interconnection have not justified the fixed and recurring costs

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19 See CMRS Second Report and Order, 9 FCC Rcd at 1497-98 (recognizing that LECs are required to interconnect with all CMRS providers upon reasonable request).

20 See Second NPRM ¶ 33; 1992 Merger Guidelines § 1.1, Trade Reg. Rep. (CCH) ¶ 13,104 (Apr. 7, 1992).

21 See U.S. v. E.I. DuPont de Nemours & Co., 351 U.S. 377, 395 (1956).

associated with direct interconnection. Specifically, all but a minuscule amount of calls originating on a cellular system that do not also terminate on that system in fact terminate on the landline network (or are interexchange and thus interconnect with the landline network, not a local wireless network). Therefore, interconnection with the landline LECs is necessary for completion of the substantial majority of calls. Denial of direct cellular-to-cellular, or more broadly CMRS-to-CMRS, interconnection would affect only a small percentage of CMRS-originated calls.

Cellular carriers thus have considered the alternative of indirect interconnection through the LECs versus direct CMRS-to-CMRS interconnection and have chosen the former. In other words, despite relative market share equality in the downstream market for mobile voice services, facilities-based cellular carriers have not entered into direct interconnection arrangements. This absence of direct interconnection between cellular carriers unquestionably demonstrates that interconnection via the LECs is, at current prices, readily interchangeable with, and indeed preferable to, direct connection. Interconnection via the landline LECs therefore partici-

pates in the same relevant product market as direct CMRS-to-CMRS interconnection.

The Commission has also requested comment on the relevant geographic market for purposes of analyzing the need for mandatory interconnection.[22] The relevant geographic market is the area to which a purchaser can reasonably turn for the relevant product.[23] In the case of the upstream input of interconnection, the relevant geographic market is the operating territory of the carrier with which a CMRS provider seeks interconnection. Again, cellular carriers have minimal market share given that interconnection via landline LECs is a reasonable substitute.

Because cellular carriers view indirect LEC interconnection as a reasonable substitute for direct connection, CMRS providers possess a small share of any relevant "interconnection" market. Thus, any attempt by cellular carriers to raise rivals' cost by refusing interconnection would be doomed to fail insofar as such refusal could not affect output in the interconnection

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22 See Second NPRM ¶¶ 34-35.

23 U.S. v. Philadelphia Nat'l Bank, 374 U.S. 321, 359 (1962) (quoting Tampa Elec. Co. v. Nashville Coal Co., 365 U.S. 320, 327 (1961)).

market as a whole.[24] In light of the lack of upstream market power, downstream analysis of the relevant product and geographic market is unnecessary.[25]

Analysis under the "essential facilities" doctrine likewise demonstrates that any unwillingness by cellular carriers to provide direct interconnection to other CMRS providers is not anticompetitive. Under the essential facilities doctrine, proof of anticompetitive conduct or monopolization exists if each of the following elements is shown: (1) control of an essential facility (*i.e.*, a bottleneck); (2) a competitor's inability to duplicate the essential facility; (3) denial of use of the facility to a competitor; and (4) technical and

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[24] See, e.g., Thomas J. Krattenmaker & Steven C. Salop, Anticompetitive Exclusion: Raising Rivals' Costs To Achieve Power over Price, 96 Yale L.J. 209, 230, 250 (1986) (under successful raising rivals' costs strategy one must restrict available supply of a key input); Timothy J. Brennan, Understanding Raising Rivals' Costs, U.S. Dept. of Justice Working Paper EAG 86-16, at 6 (Sept. 26, 1986), reprinted in 33 Antitrust Bull. 95 (1988) ("To raise rivals' costs, by definition one has to raise their input prices. Input prices cannot be raised without either acquiring power over price in the markets for those inputs, or causing pre-existing but restrained power in the upstream market to be exercised.").

[25] Even assuming the narrowest possible downstream market (*i.e.*, mobile voice services), lack of market power in the upstream "interconnection" market precludes cellular carriers from profitably raising the costs of rival CMRS providers.

economic feasibility of providing competitor access to the facility.[26] Courts generally have interpreted the "feasibility" prong as asking whether denial is based on a legitimate business justification.[27]

Even assuming that direct CMRS-to-CMRS interconnection constitutes an essential facility, the second and fourth elements of the "essential facilities" doctrine are not present in the denial of CMRS interconnection. First, all CMRS providers have a reasonable interconnection alternative through the landline LEC that is preferable. Second, cellular carriers have a legitimate business reason for denying direct interconnection -- namely, the inability to provide interconnection on a more cost-efficient basis than the landline LEC. Indeed, the fact that, in areas where the cellular licensees have no affiliation with the LEC, the cellular licensees have not entered into an interconnection arrangement stands as

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[26] See, e.g., MCI Communications Corp. v. AT&T, 708 F.2d 1081, 1132-33 (7th Cir.), cert. denied, 464 U.S. 891 (1983); Hecht v. Pro-Football, Inc., 570 F.2d 982, 992-93 (D.C. Cir. 1977), cert. denied, 436 U.S. 956 (1978). See generally ABA Antitrust Section, I Antitrust Law Developments 246-50 (3d ed. 1992).

[27] See MCI Communications Corp. 708 F.2d at 1133; City of Anaheim v. S. Cal. Edison Co., 955 F.2d 1373, 1379-80 (9th Cir. 1992).

persuasive testimony to the existence of a legitimate business reason for not interconnecting.[28]

Given current market realities, New Par maintains that traditional antitrust analysis does not warrant the imposition of mandatory interconnection obligations on CMRS providers. If and when the level of CMRS-originated calls terminating on rival CMRS systems increases significantly, the Commission could re-examine the issue of mandatory CMRS interconnection. But imposing interconnection obligations based simply on the remote possibility that anticompetitive incentives may develop sometime in the future would be arbitrary and capricious.

C. The Commission Should Clarify That the Formal Complaint Process Is Not Appropriate for Resolving Initial Interconnection Requests.

In response to the Commission's reiteration of the rights and obligations of CMRS providers,[29] New Par agrees that Sections 201(a) and 332(c)(1)(B) of the Act requires "[the Commission] to respond to requests for interconnection with proceedings to determine whether it is necessary or desirable in the public interest to order

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[28] See supra note 8.

[29] See Second NPRM ¶ 38.

interconnection in particular cases."[30] In contrast, the Section 208 complaint process is appropriate only when there has been a violation of the Act or existing Commission rules and regulations.[31] Therefore, formal complaint proceedings are not the proper forum for addressing the public interest analysis required under Section 201(a).

As the Commission itself recognizes, the Section 208 complaint process is designed for seeking redress for violations of the Act or the Commission's rules.[32] Indeed, the Second NPRM recognizes that the Section 208 complaint process is appropriate in cases of unlawful denials of interconnection or interconnection arrangements in violation of the Act's prohibitions on unjust or unreasonable charges or practices.[33] For exam-

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30 Id. ¶ 39.

31 See, e.g., Tri-City Telephone Co., 20 F.C.C.2d 674, 675 (1969) (Commission viewing a "complaint" as actually a petition for interconnection under Section 201(a)).

32 See Second NPRM ¶ 38.

33 Id. ¶ 40; see, e.g., Interconnection Declaratory Ruling, 2 FCC Rcd at 2916 (providing that, because LECs have been ordered to provide interconnection to cellular carriers upon reasonable request, cellular carriers unable to obtain an interconnection agreement may file a complaint with the FCC pursuant to (continued...)

ple, if one CMRS provider offered an interconnection arrangement to a second CMRS provider but denied such an interconnection arrangement to a similarly situated third CMRS provider, a Section 208 complaint could be the proper procedural mechanism for seeking redress.

The Section 208 complaint process, however, is not the proper procedural vehicle for submitting an initial interconnection request to the Commission. Thus, the Commission should clarify its statements in the second NPRM and confirm that, under the Act and its own rules, a Section 208 complaint cannot lie until (1) the Commission were to adopt a generally applicable interconnection requirement or (2) there is unlawful discrimination or other act that independently gives ground to a complaint.

D. The Commission Should Preempt Inconsistent State-Imposed Interconnection Requirements.

The Commission also seeks comment on the preemption of State-imposed interconnection.[34] New Par submits that regardless of whether the Commission ultimately imposes CMRS interconnection obligations, it should

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[33](...continued)
Section 208); Interconnection NOI, 9 FCC Rcd at 5451.

[34] See Second NPRM ¶ 44 & n.76.

preempt any State-imposed interconnection regulation that is inconsistent with the Commission's interconnection policy ultimately adopted in this proceeding.

Preemption of State policies or regulations that impede or interfere with Federal interconnection policies would be consistent with congressional judgment to develop a nationwide regulatory framework for CMRS.[35] As demonstrated above and suggested in the Second NPRM, imposition of any mandatory CMRS interconnection obligations would frustrate the Commission's policy of promoting the development of such connections and the provision of CMRS service generally. By prematurely ordering interconnection, the Commission -- and the States -- would be mandating uneconomical and potentially technically disruptive arrangements, which could impair the provision of CMRS service to the public.

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[35] See 47 U.S.C. § 332(c)(3); Ohio PUC Order ¶ 14 (noting congressional intent to establish a national CMRS regulatory policy, not a policy balkanized State-by-State); see also CMRS Second Report and Order, 9 FCC Rcd at 1498 (preempting State regulation of CMRS-LEC interconnection on the ground that separate interconnection arrangements for intrastate and interstate CMRS would not be feasible); Interconnection Declaratory Ruling, 2 FCC Rcd at 2912-13 (asserting plenary jurisdiction over physical interconnection between cellular carriers and LECs).

Moreover, because many regional cellular systems and MTA/BTA boundaries run across State borders, the interstate and intrastate components of interconnection are inseparable.[36] Due to this inseparability, the Commission may, and should, preempt inconsistent State-imposed interconnection obligations that impede the Federal policy of unrestricted entry into the CMRS marketplace.[37] Failure to preempt disparate State regulation of CMRS interconnection would result in administrative confusion and ultimately impede the development of interconnection arrangements between CMRS providers.

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[36] Cellular service is primarily intrastate in nature. See Interconnection Declaratory Ruling, 2 FCC Rcd at 2910; see also 47 U.S.C. §§ 2(b) & 221(b). In stark contrast, by adopting Rand McNally's MTAs and BTAs for the licensing of PCS, the Commission has now introduced a strong interstate dimension to the mobile services generically known as CMRS. See Interconnection NOI, 9 FCC Rcd at 5437 & n.123 (citing Amendment to the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700 (1993)).

[37] See Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 375 n.4 (1986); California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); National Ass'n of Reg. Comm'rs v. FCC, 880 F.2d 422 (D.C. Cir. 1989).

E. The Commission Should Allow Market Forces To Drive the Development of Cross-Service Roaming Arrangements.

New Par agrees with the Commission's tentative conclusion that no regulatory action is required to promote cross-service roaming because market forces will drive the development of cross-service roaming arrangements, as is currently the case in the cellular industry.[38] As the results of the A and B Block auction for PCS licenses demonstrate, many cellular licensees will also be PCS providers. Marketing and other prudent business practices will thus dictate the natural development of cross-service (in particular, PCS-cellular) roaming. For example, a PCS provider in one market that is a cellular licensee in another market will likely encourage its cellular subscribers to use its PCS service when roaming in its PCS market, and vice versa.[39] Moreover, as part of its overall marketing plan, that same CMRS provider could also offer its subscribers lower roaming rates to encourage such cross-service roaming. In fact, this is the case today for many instances of intra-compa-

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[38] See Second NPRM ¶ 59.

[39] Vendors are already developing dual mode cellular-PCS phones (*i.e.*, phones capable of operating in the digital mode on both cellular and PCS frequencies and in analog mode on cellular frequencies).

ny cellular roaming where the company operates both wireline and nonwireline systems. Regulation designed to encourage cross-service roaming is simply unnecessary.

Indeed, regulation could have the unintended effect of hindering the development of cross-service roaming. CMRS technology is developing rapidly. Any regulations regarding roaming would quickly become out-dated and thus hamstring the development of innovative CMRS technology. The Commission therefore should refrain from regulation and allow the CMRS industry to develop an industry standard to permit cross-service roaming just as the cellular industry has been developing the IS-41 protocol without FCC mandate. Nothing suggests that the overall CMRS industry will not do the same.

New Par also concurs with the Commission's tentative conclusion that no regulation is required to promote competitive, cost-based CMRS roaming rates.[40] The development and refinement of IS-41 and competition among cellular, PCS, and ESMR providers, each with overlapping but not coterminous license areas, will serve as an adequate check on the availability and price of roaming

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[40] See Second NPRM ¶ 56.